

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 15 4536 MV

TRISTALYN VALENCIA

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Tristalyn Valencia's pro se Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c) and Amendment 821 of the Federal Sentencing Guidelines. Doc. 49. The government filed a Response. Doc. 50. Having considered the briefs and relevant law, and being otherwise fully informed, the Court finds that Ms. Valencia is not eligible for a sentence reduction and her motion must be denied.

DISCUSSION

On December 14, 2016, Ms. Valencia was sentenced to 13 years in custody after being convicted of Distribution of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2). Doc. 46. She seeks a reduction in sentence under Amendment 821 of the Federal Sentencing Guidelines, which provided for a two-level decrease for defendants with zero criminal history points.

18 U.S.C. § 3582(c)(2) authorizes courts to reduce a defendant's sentence where the defendant "has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2); *see also United States v. Price*, 44 F.4th 1288, 1294 (10th Cir. 2022) (retroactive Guideline amendments

are a valid statutory reason to modify a sentence). On November 1, 2023, Sentencing Guidelines Amendment 821 went into effect. Relevant here, in Part B of the Amendment, the Sentencing Commission added a two-level decrease for certain eligible defendants with zero criminal history points, which now appears in U.S.S.G. § 4C1.1. On August 24, 2023, the Sentencing Commission made this amendment retroactive.

Ms. Valencia seeks a reduction in her sentence because she had zero criminal history points at the time of her sentencing. However, in order to qualify for the zero-point offender adjustment, the offense of conviction cannot be a “sex offense.” *See* U.S.S.G. § 4C1.1(a)(5). The term “sex offense” is defined in U.S.S.G. § 4C1.1(b)(A) as “an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. § 1591.” U.S.S.G. § 4C1.1(b)(A). Ms. Valencia was convicted of a violation of 18 U.S.C. § 2252A(a)(2), which falls within Chapter 110 of Title 18 of the United States Code. Accordingly, she was convicted of a “sex offense” as defined by the Guidelines and does not qualify for a two-level decrease under U.S.S.G. § 4C1.1. As such, her Guidelines range remains the same and the Court is therefore not authorized to reduce her sentence under 18 U.S.C. § 3582(c)(2).

Nevertheless, the Court notes that Ms. Valencia has made efforts to better herself while in custody. She reports that she has completed the Non-Residential Sex Offender Treatment Program, which included the following courses: Emotional Regulation Skills, Boundaries and Healthy Relationships, Intimacy Skills, Emotional Self-Regulation, Effective Communication and Conflict Resolution, and Sexual Self-Regulation. Doc. 49. She is also currently seeking a degree in

Business Management from Stratford University. *Id.* While the Court finds that these strides are commendable, it is not authorized to reduce Ms. Valencia's sentence.

IT IS THEREFORE ORDERED that Ms. Valencia's Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c) and Amendment 821 [Doc. 49] is denied.

ENTERED this 24th day of June 2024.



MARTHA VAZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE